

Issue: Compliance-30-day rule; Ruling date: March 13, 2002; Ruling #2001-142;
Agency: Department of Motor Vehicles; Outcome: Out of compliance- grievant



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles

EDR Ruling # 2001-142
March 13, 2002

ISSUE:

Did the grievant initiate her grievance in a timely manner?

RULING:

No. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.¹

EXPLANATION:

The grievant is employed with a Department of Motor Vehicle (DMV) District Office. Prior to 1999, the grievant had been selected as a Motor Carrier Trainer and was responsible for curriculum development and for conducting training presentations. In 1999, the District Office designated certain employees as New Employee Trainers/Technical Trainers. In April or May 2001, the grievant was informed that she would no longer conduct Motor Carrier training and that the separate Motor Carrier training program would be eliminated. All future training would be combined and coordinated through the designated Technical Trainers. Also in early 2001, an agency-wide decision was made under DMV's Salary Administration Plan to grant Technical Trainers a five-percent increase in salary.² The grievant was no longer designated as a trainer, no longer performed formal presentations and training, and did not receive the pay increase.

¹ See Va. Code § 2.2-3003(G).

² Department of Human Resources Management (DHRM) Policy 3.05 provides that state agency compensation responsibilities include the development and utilization of an Agency Salary Administration Plan to outline implementation of the Compensation Management System and for "ensuring consistent application of pay decisions." DHRM Policy 3.05 "Definitions" (effective September 25, 2000, revised March 1, 2001). Similarly, DMV's Salary Administration Plan states that its purpose is to "pay its employees in a manner sufficient to support and develop a high performance workforce." *DMV Salary Administration Plan* (adopted September 25, 2000), "DMV Compensation Philosophy."

On July 10, 2001, the grievant first discovered that other employees, designated and performing as Technical Trainers, had received the pay increase. On July 17, 2001, the grievant initiated a grievance alleging that the agency had unfairly compensated the Technical Trainers and had discriminated against her. Management responded at the first resolution step that the grievant was out of compliance because the grievance was not initiated within 30 calendar days of the event or action giving rise to the grievance and because the grievance did not pertain directly and personally to the grievant's own employment.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the event or action that is the basis of the grievance, unless there is just cause for the delay. When an employee initiates a grievance beyond the 30-calendar day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. Additionally, any grievance that does not pertain directly and personally to the grievant's own employment may be closed for noncompliance.³

The threshold compliance issue to be decided in this case is whether the grievant timely initiated her July 17, 2001 grievance.⁴ This Department has determined that the event that gave rise to the grievance was management's April/May, 2001 decision to no longer enlist her training services due to the elimination of the Motor Carrier Training program as a separate program. The grievant could have grieved management's decision within 30 calendar days of her knowledge of the decision but did not do so. Accordingly, her July 17th grievance is out of compliance with the grievance process because it was not initiated within 30 calendar days of the event that gave rise to her grievance.⁵

Neil A.G. McPhie, Esquire
Director

³ *Grievance Procedure Manual* §2.4 (3), p 6. For that reason, grievances that challenge the compensation of other employees, without more, are out of compliance with the grievance procedure and may be closed.

⁴ *Compare* Brinkley-Obu v. Hughes Training, 36 F.3d 336, 351 (4th Cir. 1994)(for an Equal Pay Act claim to be timely, the employer's alleged wrongful conduct must have *affected the plaintiff* during the statute of limitations period).

⁵ Because the grievance is not timely, the issue of whether the grievance related directly and personally to grievant need not be decided in this ruling.